IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6751 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

T.P. DESAI

Versus

GUJ HOUSING BOARD

Appearance:

MR S M Mazgaonkar for Mr SN SHELAT for Petitioner

MRS KETTY A MEHTA for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 10/03/2000

ORAL JUDGEMENT

This is a petition filed under Article 226 of the Constitution of India for appropriate writ, order or direction for quashing and setting aside the orders passed by the respondent No.1 dated 9.7.1987 by which the

present petitioner was departmentally punished and it was directed that his two increments be withheld with permanent effect.

2. The petitioner was working as Dy.Executive Engineer in the employment of the respondent which is a State owned Housing Corporation. Some allegations were made against him and on account of the said allegations, regular departmental enquiry was conducted against the petitioner and at the conclusion of the enquiry, the aforesaid punishment was imposed by the competent authority on 9.7.1987.

3. Feeling aggrieved by the said punishment order, petitioner approached this Court by way of this petition contending that the impugned order of penalty is illegal and violative of the Rules applicable to the petitioner and, therefore, the petitioner has applied in this petition for quashing and setting aside the penalty order.

4. I have heard Mr S M Mazgaonkar, Learned Advocate for Mr S N Shelat, for the petitioner. I have also heard Ms. Ketty A Mehta, learned Advocate for the respondent. Learned Advocate for the petitioner has contended that the order of punishment is against the provisions of rules, inasmuch as the rules provided for supply of copy of the report of the Inquiry Officer before imposing the penalty on the petitioner. He has further argued that the said copy has not been supplied to the petitioner and consequently the penalty order is illegal and against the provisions of the rules of Gujarat Civil Services (Discipline and Appeal) Rules, 1971 (for short, 'the Rules').

5. The respondent has filed affidavit at page 21 wherein it has been contended that it was not necessary to supply the said copies to the petitioner in view of the existing rules at the relevant time. It has also been contended that the petitioner has been supplied with copy of the report after the punishment order was imposed and the petitioner has not produced the same. But the order of punishment is not illegal on the aforesaid consideration and, therefore, the contention is that the petition is without any merit and it deserves to be dismissed.

6. It is very clear that the Government of Gujarat has amended the Rules of 1971 in 1986 and on account of the said amendment, it would not be necessary for the department to supply copy of report of the Inquiry

Officer to the petitioner-delinquent. The rules were amended in 1986 and the present punishment was imposed in 1987. Therefore, on the date on which the punishment was imposed, the amended rules were in existence and therefore, under the rules, it was not necessary for the department to supply copy of the report of the Inquiry Officer to the petitioner. Consequently, non-supply of the said report cannot become a ground to assail the order of punishment imposed by the respondent Corporation.

7. Reliance has been placed on a decision of the Apex Court in the case of Union of India v. Mohd. Ramzan Khan, reported in (1991) 1 SCC 588. There it has been clearly laid down that the copy of the report of the Inquiry Officer is an additional material which is being considered by the competent authority at the time of final disposal of the departmental enquiry and, therefore, that additional material must be brought to the notice of the delinquent and if that is not done, the disciplinary proceedings would be treated to be illegal. However, it has been made clear in the said decision that the principles enunciated therein shall operate prospectively and not retrospectively. The said decision was reported in 1991 whereas the present order has been passed in 1987. Therefore, if the aforesaid principle does not apply retrospectively, then it would not apply to the case before this Court, and consequently non-supply of the report will not be a ground for quashing the proceedings in question. It would be important to note that the aforesaid case was again referred in the case of Managing Director, Food Corporation of India v. Narendra kumar Jain, reported in (1993) 2 SCC 400, wherein it has been again said that Mohd. Ramzan Khan's case (supra) has a prospective effect and not a retrospective. Considering these two decisions, it is very clear that the above principle applies prospectively and therefore, it would not apply to the case of 1986-87 when the penalty was imposed on the present petitioner.

8. Once it is found that the said principle applies prospectively and the petitioner was not entitled to copy of the report of the Inquiry Oficer, then in that event the petitioner was not entitled to any relief and the consequential enquiry proceedings held against the petitioner cannot stand vitiated for non-supply of the said document.

No other point was agitated on behalf of the petitioner for challenging the order of punishment.

9. Ms. K A Mehta, learned Advocate for the respondent has also relied upon the aforesaid decisions and has argued that the petitioner was not entitled to the said copy of the report of the Inquiry Oficer in view of the aforesaid two decisions as well as the amendment made in 1986 to the Rules.

10. In the aforesaid view of the matter, the petitioner is not entitled to any relief as the enquiry against the petitioner cannot stand vitiated on the aforesaid consideration. Consequently, the petition deserves to be dismissed. It is accordingly dismissed. Rule discharged. Notice with respect to interim relief also discharged. However, considering the facts and circumstances of the case, there shall be no order as to costs.

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msp.